



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107

[Docket No. PHMSA-2022-0033 (HM-208J)]

RIN 2137-AF59

Hazardous Materials: Adjusting Registration and Fee Assessment Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: PHMSA is publishing this ANPRM to solicit feedback on potential adjustments to the statutorily mandated hazardous materials registration and fee assessment program. Actions such as the potential adjustment of fees or the addition of other entities among those required to register may be necessary to fund PHMSA's national emergency preparedness grant programs at the newly authorized level in accordance with the Infrastructure Investment and Jobs Act of 2021. To fully engage with stakeholders, this ANPRM solicits comments and input on questions related to the scope of the registration and fee assessment program. Any comments, data, and information received will be used to evaluate and draft proposed amendments.

DATES: Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, PHMSA will consider late-filed comments to the extent possible.

ADDRESSES: You may submit comments identified by the docket number PHMSA-2022-0033 (HM-208J) by any of the following methods:

- *Federal e-Rulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493-2251

- *Mail:* Docket Management System, U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, Ground Floor, Room W12-140 in the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number (PHMSA-2022-0033) or RIN 2137-AF59 for this ANPRM at the beginning of the comment. Note that all comments received will be posted without change to <https://www.regulations.gov> including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Docket: For access to the dockets to read background documents or comments received, go to <https://www.regulations.gov> or DOT's Docket Operations Office; see **ADDRESSES**.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this ANPRM contain commercial or financial information that is customarily treated as private, that you treat as private, and that is relevant or responsive to this ANPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPRIETARY." PHMSA will treat such marked submissions as confidential under the Freedom of Information Act (FOIA) and they will not be placed in the public docket of this ANPRM. Submissions containing CBI should be sent to Yul B. Baker Jr., Standards and Rulemaking Division, Office of Hazardous Materials Safety, (202) 366-8553, PHMSA, East Building, PHH10, 1200 New Jersey

Avenue, SE, Washington, D.C. 20590. Any commentary that PHMSA receives, which is not specifically designated as CBI, will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Yul B. Baker Jr., Standards and Rulemaking Division, Office of Hazardous Materials Safety, (202) 366-8553, PHMSA, East Building, PHH10, 1200 New Jersey Avenue, SE, Washington, D.C. 20590 and Adam Lucas, Operations System Division, Office of Hazardous Materials Safety, (202) 366-1074 PHMSA, East Building, PHH-60, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Number of Registrants for Registration Year 2021-22
- III. Registration Fee Scenario Table
- IV. Options for Public Comment

I. Background

PHMSA is considering an adjustment to our statutorily mandated registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. PHMSA conducts a national hazardous materials registration program under the mandate in 49 U.S.C. 5108 for a person¹ who offers for transportation or transports certain hazardous materials in intrastate, interstate, or foreign commerce. The registration program implements the mandate for persons to file a registration statement with the Secretary of Transportation—as delegated to PHMSA—and collects registration and processing fees from persons required to file a registration statement (hereafter referred to as “registrants”) to fund Emergency Preparedness (EP) grants. EP grants support hazardous materials emergency response planning and training activities by states, local governments, and Native American Tribes. EP grants also fund non-profit organizations to provide “train-the-trainer” programs for hazardous materials emergency response training and hazardous materials employee training.

¹ Defined in 49 CFR 171.8.

Additionally, EP grants support the development of the Emergency Response Guide (ERG) and provides funds for grantee monitoring and technical assistance.

As noted above, registration and fee requirements² apply to a person who offers for transportation—or who transports—hazardous material in foreign, interstate, or intrastate commerce. Specifically, the requirements apply to shippers and carriers if they offer or transport the following:

1. A highway route-controlled quantity of a Class 7 (radioactive) material.
2. More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car or freight container.
3. More than one L (1.06 quarts) per package of a material extremely toxic by inhalation.
4. A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases, or more than 13.24 cubic meters (468 cubic feet) for solids.
5. A shipment in other than a bulk packaging of 2,268 kg. (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.
6. Except for certain farming operations, a quantity of hazardous material that requires placarding.

Furthermore, PHMSA has discretion to require additional persons to register—beyond those who offer, and transport certain categories and quantities of hazardous materials listed in 49 U.S.C. 5108(a)(1)—and to set the annual registration fee between the statutorily mandated minimum and maximum amounts. See 49 U.S.C. §§ 5108(b), 5116, and 5128(b). PHMSA may currently set an annual registration fee between a minimum of \$250 and maximum of \$3,000.

² See § 107.601 Applicability.

Since 2010, the annual registration fee has been set at \$250 (plus a \$25 processing fee) for small businesses³ and not-for-profit organizations (hereafter referred to as “small businesses”) and \$2,575 (plus a \$25 processing fee) for not small businesses (hereafter referred to as “large businesses”) in accordance with 49 CFR 107.612(b).

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58)—commonly known as the “Bipartisan Infrastructure Law” (BIL)⁴—into law and authorized the Secretary of Transportation to expend \$46,825,000 from EP funds to carry out the grants program, for fiscal years 2022 through 2026. As such, the BIL increases the authorized level of the EP grants program by \$18,507,000. To fully fund the EP grants program to the increased authorization amounts, PHMSA will need to adjust fees for the national registration and fee program.

The current registration fee structure does not consider the relative risk of applicants, products, transport routes, or other relative risks (or lack thereof) imposed by an applicant to the public due to the specific hazardous materials being transported. This poses challenges and potential opportunities for improvement, consistent with market-based principles as well as principles of equity and fairness: the potential for a registration scheme that reflects many applicants’ relatively minor imposition of risk on the public as well as a more equitable fee structure for the few entities that pose a disproportionately larger risk on the public.

II. Number of Registrants for Registration Year 2021-22⁵

Using the current registration year 2021-22 as an example, there were 25,529 small business registrants that paid \$6,382,250 in registration fees and \$638,225 in processing fees—while there were 6,673 large business registrants that paid \$17,183,975 in registration fees and \$166,825 in processing fees. The total funds from all registrants—not including processing

³ “Small Business” here is defined as either a “small business” per the SBA or a non-profit, which statutorily pay the same rate as small businesses, regardless of size.

⁴ See BIL at: <https://www.congress.gov/117/bills/hr3684/BILLS-117hr3684enr.pdf>.

⁵ A registration year runs from July 1 of the current year to June 30 of the following year.

fees—were approximately \$23,565,225 for the registration year. PHMSA may collect additional monies to fund EP grants at the increased authorization level of \$46,825,000 specified in the BIL. As one approach, PHMSA has asked Congress for authorization to increase the maximum fee for a registrant as a possible means to collect additional funds. Other approaches include expanding the pool of persons subject to registration or increasing fee amounts from current levels. Though more complicated, an additional approach could involve any number of factors to capture fees based on the relative risk an applicant poses via the transportation of hazardous material goods.

Historically, as noted in Section I. “Background,” there are triggering requirements for registration and fee payments based on certain types of transport activity performed by a shipper or carrier. If a company is required to register, assigned fees are based on the type and size of the business performing the activity. PHMSA is contemplating an approach of factoring in the level of exposure or risk introduced by a shipper or carrier when assigning fees—for example, if a business operates globally and transports a particularly hazardous material, it might incur a slightly higher fee than a smaller business, which poses a relatively minor risk to the public and may therefore incur a lower fee. Thus, in this ANPRM, PHMSA solicits comment from the public on how best to collect additional funding and to help initiate ideas on different approaches. PHMSA provides a registration fee scenario table in Section III. “Registration Fee Scenario Table” to offer a basic illustration of the potential impacts of the fee changes to registrants. Section IV. “Options for Public Comment” provides specific scenarios PHMSA is considering for collecting additional funds as well as discussion of potential research for development of a methodology for a more equitable registration scheme. The scenarios are split into two categories of options: (1) based on the current maximum fee remaining at \$3,000; and (2) based on the possibility of increasing the maximum fee.

III. Registration Fee Scenario Table

To achieve full funding at the new authorized spending level to fund the EP grants program, PHMSA presents a fee scenario table as visual aid on possible impacts of raising funds from potential sources by increasing the fees on large businesses, increasing the number of large businesses required to register, or any combination thereof.

- Scenarios A and B involve scenarios in which the entire required sum is raised exclusively by increasing one of the sources. For example, raising only the fee paid by large businesses, but leaving small business fees and registration requirements unchanged. The purpose of providing these scenarios is not to necessarily suggest their adoption, but rather to illustrate the outer limits of the potential factors necessary to raise additional funding.
- Scenarios C-D represent two potential hybrid scenarios, in which additional funding is attained from raising several sources, rather than a single source. The purpose of providing these scenarios is to illustrate how a combination of higher fees and expanded registration requirements could achieve the desired funding level. Therefore, PHMSA requests comments and feedback on how best to balance the factors illustrated in the table below to reach the Congressional funding amount, including alternative combinations of raising rates and the possibility of expanding registration requirements.

Alternative Scenarios for Registrants	# Of Small Businesses	Rate Paid by Small Businesses	# Of Large Businesses	Rate Paid by Large Businesses	Small Business Burden	Total Collected
Baseline: No change	27,723	\$250	6,886	\$2,575	28.10%	\$24,662,200
Scenario A:						
All additional funds come from large businesses: No expansion of registration requirements (i.e., how much should we raise fees on large businesses to avoid impacting small businesses?)	27,723	\$250	6,886	\$5,794	14.8%	\$46,825,000
Results for Scenario A: To maintain current registration requirements or rates for small businesses, the annual rate charged for large businesses would have to increase to \$5,794.				2.25x increase	-13.3% change in small business burden	
Scenario B:						
Fees are fixed: All additional funds come from expanding the registration requirements for large businesses.	27,723	\$250	15,493	\$2,575	14.80%	\$46,825,000
Results for Scenario B: To maintain current rates charged to either small businesses or large businesses and not expand the pool of small businesses, the total number of large businesses charged would have to increase to 15,493.			2.25x increase in large business applicant pool		-13.3% change in small business burden	
Scenario C:						
Fees on large businesses are raised 20%: Additional funds come from expanding the registration requirements for large businesses.	27,723	\$250	12,911	\$3,090	14.8%	\$46,825,000
Results for Scenario C: Raising the fee on large businesses by 20% but holding small business fees constant requires a 1.87x increase in eligibility for large businesses.			1.87x increase	1.20x increase	-13.3% change in small business burden	

Alternative Scenario for Registrants Considered to be “Non-High Risk” Large Businesses	# Of Small Businesses	Rate Paid by Small Businesses	# of “Non-High Risk” Large Businesses	Rate Paid by “Non-High Risk” Large Businesses	# of “High-Risk” Large Businesses	Rate Paid by “High Risk” Large Businesses	Small Business Burden	Total Collected
Scenario D:								
Assume 25% of large businesses are identified as “high risk.” Fees for small businesses are unchanged. Fees for “non-high risk” large businesses are increased to the statutory limit of \$3,000. No increased eligibility. All additional revenue comes from fees on “high risk” large businesses.	27,723	\$250	5,165	\$3,000	1,722	\$14,182	14.8%	\$46,825,000
Results for Scenario D: The 25% of large businesses deemed to be “high risk” would have to pay a registration fee of \$14,182, 5.5x higher than their current registration fee.				1.17x increase		5.5x increase	-13.3% change in small business burden	

Notes:

1. Bold figures represent the amount each variable would have to be set to make up the additional funding.
2. Bold and italicized figures represent the factor difference between the proposed level and baseline.
3. Information for table was sourced from PHMSA’s Registration Dataset.

IV. Options for Public Comment

The table above provides combinations of increased rates or expanded registration requirements to achieve the increased funding level. PHMSA requests feedback on these potential methods, and any alternate methods PHMSA should consider, to achieve the increased funding. Additionally, please address in your submission any impact on policy considerations (e.g., equity/distributional impacts or impact on small businesses) advocating for or against different options.

If registration fees remain at a maximum \$3,000 per year, PHMSA is considering the following options for comment:

1. Keep the existing registration requirements (see 49 CFR 107.601) and raise the registration fee for large businesses from \$2,575 to \$3,000.
2. Keep the existing registration requirements and apply a nominal fee (e.g., \$25) for each facility or geographic location from which a registered person (i.e., a company) offers for transportation, or transports, certain hazardous materials.
3. Modify assignment of the registration fee and/or amount based on the commensurate hazard posed (e.g., shipping Packing Group I materials vs. Packing Group III materials)⁶ or risk profile (e.g., frequent vs. infrequent shipments).
4. Expand the registration requirements—for example, certain hazardous materials are not subject to placarding when shipped domestically, and therefore a person who offers for transportation, or transports, these materials are generally exempt from registration—but could be expanded with appropriate risk-based justifications.
5. Expand the registration fee requirements to include certain persons who acquire approvals or special permits from PHMSA that otherwise are not subject to registration, but which should be based on a public risk-based justification.

If Congress allows an increase in the maximum fee, PHMSA is considering the following options for comment:

1. Maintain the current maximum registration fees and create an upper tier of a higher fee for a certain category of very large businesses. If this approach is preferred, how should PHMSA define a “very large business?” Specifically, what risk factors should

⁶ Packing group means a grouping according to the degree of danger presented by hazardous materials. Packing Group I indicates great danger; Packing Group II, medium danger; Packing Group III, minor danger.

go into determining a very large business classification, to better account for market-based risks to the public as well as equity factors between applicants.

2. Change the registration requirements to reduce the overall number of registrants.
3. Keep the existing registration requirements and raise the registration fee for large businesses from \$2,575 to a dollar value below the Congressionally authorized maximum fee (e.g., if the maximum allowed were increased from \$3,000 to \$5,000).
4. Raise fees for specific business types, classes of material, or commodities (e.g., poisonous by inhalation material), which are considered extremely high risk.

Registration Fee Equity

PHMSA may initiate a research effort to develop a methodology that could replace the existing two-tier registration structure with a more equitable system. This action would help address transportation equity by basing the fee structure on the amount of risk introduced into the transportation system by an entity. This work would build on the questions above (i.e., *if registration fees remain at a maximum \$3,000 per year*). While PHMSA considers initiating this research effort, PHMSA does have two related questions that may help us determine the potential scope and how to formulate the research effort:

1. What risk factors of transporting hazardous materials should PHMSA consider?
2. What data or information is available to support the choice of these risk factors and methodology? Please provide all data or information you would like PHMSA to consider.

As noted above, PHMSA seeks comment on each of these questions and proposals, as well as any additional options not included in the above-outlined discussions.

Issued in Washington, D.C., on September 15, 2022, under the authority delegated in
49 CFR 1.97.

William S. Schoonover

*Associate Administrator for Hazardous Materials Safety,
Pipeline and Hazardous Materials Safety Administration*

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